

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF QUEENS

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M&T BANK,

Plaintiff,

Index No.: 706898/2022

vs.

BLANCA LUCIANO  
A/K/A BLANCA I. LUCIANO,

Defendant.


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**NOTICE OF CROSS-MOTION**

Nature of Action:	Breach of Contract
Moving Party:	Plaintiff
Directed To:	Defendant
Date and Time:	September 6, 2022, or as soon thereafter as the motion can be heard.
Place:	Hon. Maurice E. Muir, J.S.C. Queens County Supreme Court 88-11 Sutphin Blvd., Queens, New York 11435
Supporting Papers:	Affidavit of Jack A. Bargnesi, Esq., sworn to August 25, 2022, and the affidavit of Caitlin Whalen sworn to August 29, 2022.
Answering Papers:	Pursuant to CPLR 2214 and 2215, answering papers, if any, must be served at least one (1) day prior to the return date of this motion.
Relief Requested:	An order (1) denying defendant's motion in its entirety, and (2) granting plaintiff's motion, together with such other and further relief that the Court deems just and proper.
Grounds for Relief:	CPLR 3212 and associated case law.
Oral Argument:	Not requested. Plaintiff requests that this motion be decided on submissions only.

Dated: August 25, 2022  
Buffalo, New York

**RUPP BAASE PFALZGRAF CUNNINGHAM LLC**  
Attorneys for Plaintiff

By:   
\_\_\_\_\_  
Jack A. Bargnesi, Esq.  
1600 Liberty Building  
Buffalo, New York 14202  
(716) 854-3400

**TO: CAMBA LEGAL SERVICES, INC.**  
Attorneys for Defendant  
Matthew Schedler, Esq.  
20 Snyder Avenue  
Brooklyn, New York 11226  
(718) 940-6311

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF QUEENS

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M&T BANK,

Plaintiff,

Index No.: 706898/2022

vs.

BLANCA LUCIANO  
A/K/A BLANCA I. LUCIANO,

Defendant.

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**AFFIDAVIT**

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF ERIE         )

JACK A. BARGNESI, ESQ., being duly sworn, deposes and says:

1.     I am an attorney duly licensed to practice law in the State of New York, and I am an associate with the law firm of Rupp Baase Pfalzgraf Cunningham LLC, attorneys for plaintiff, M&T Bank (the “plaintiff”), in the above-captioned action. I have worked on this matter extensively and am familiar with the matters set forth herein.

2.     I submit this affidavit in opposition to defendant’s motion to dismiss. I further submit this affidavit in support of plaintiff’s cross-motion for summary judgment.

## **PROCEDURAL HISTORY**

3. M&T Bank filed a summons and verified complaint in the Queens County Clerk's Office on March 30, 2022. Attached as Exhibit A is a copy of the summons and verified complaint.

4. M&T Bank duly served defendant with the summons and verified complaint. Attached as Exhibit B is a copy of M&T Bank's affidavit of service.

5. On or about June 22, 2022, defendant appeared by service of a pro se answer. On or about July 6, 2022, defendant filed an amended answer. Attached as Exhibit C and D, respectively, are copies of the pro se and amended answer.

6. On or about July 27, 2022, defendant filed a Motion to Dismiss.

## **FACTUAL BACKGROUND**

7. As is set forth more fully in the affidavit of Caitlin Whalen, Assistant Vice President at M&T Bank, sworn to August 29, 2022, which is incorporated by reference herein, ("Whalen Affidavit"), this action arises out of defendant's breach of a certain retail installment contract ("Contract") with M&T Bank.

8. As admitted in defendant's affidavit, she has breached the terms of the Contract by, among other things, failing to make certain payments in accordance with its terms. *See* defendant's affidavit at ¶ 5 and Whalen Affidavit at ¶ 5.

9. Based on this undisputed breach, defendant voluntarily surrendered the vehicle to plaintiff.

10. On or about May 3, 2018, plaintiff mailed defendant a notice of plan to sell property ("notice") informing defendant she breached the contract, that plaintiff intends to sell the collateral, and that defendant will be responsible for any deficiency. The notice explicitly advised defendant of her right to redeem the collateral and that it would be sold more than ten days after the notice if not redeemed in the full redemption amount of \$34,055.61. *See* Whalen Affidavit at ¶ 5-6. Attached as Exhibit E is the notice.

11. Defendant did not cure her default in response to the notice. Accordingly, M&T sold the collateral.

12. On June 26, 2018, plaintiff mailed defendant a letter stating the collateral was sold at auction, informed her there was a deficiency remaining of \$17,709.22, and demanding payment thereto ("deficiency notice"). *See* Whalen Affidavit at ¶ 9. Attached as Exhibit F is the deficiency notice.

13. On June 27, 2018, plaintiff mailed defendant a workout letter attempting to set up monthly payments to pay off the deficiency balance. Attached as Exhibit G is the workout letter.

14. Despite the foregoing attempts to workout a payment plan, defendant failed to respond to plaintiff. As a result, plaintiff was forced to file this action in attempt to recover the deficiency balance. *See* Whalen Affidavit at ¶ 13.

15. Pursuant to the terms of the Contract, the amount due totals \$16,922.12, plus accrued interest, costs, and attorneys' fees.

### ARGUMENT

#### POINT I

#### **M&T BANK IS ENTITLED TO SUMMARY JUDGMENT BECAUSE DEFENDANT HAS FAILED TO MAKE PAYMENTS WHEN DUE.**

16. M&T Bank is entitled to summary judgment because it has submitted the relevant debt instruments to the Court (*see* Exhibit A to the Whalen Affidavit), and because it has proffered an affidavit of nonpayment (*see* Kress Affidavit). *See Mfrs. & Traders Trust Co. v. True-Tone Sound*, 288 A.D.2d 951, 732 N.Y.S.2d 211 (4th Dep't 2001) (holding that plaintiff met its initial burden by submitting copies of the debt instruments in addition to an affidavit of nonpayment from its vice president); *Rochester Community Sav. Bank v. Smith*, 172 A.D.2d 1018, 569 N.Y.S.2d 277 (4th Dep't 1991) (holding that plaintiff met its burden on a motion for summary judgment by submitting the relevant debt instruments and an affidavit of nonpayment).

17. Given that M&T Bank has established its prima facie right to summary judgment, the burden shifts to defendant to raise a triable issue of fact. *See Chamberlain v. Amato*, 259 A.D.2d 1048, 688 N.Y.S.2d 345 (4th Dep't 1999).

18. Defendant cannot meet her burden, as she has no meritorious defenses to this action. In fact, defendant admits to executing the contract and her failure to make payments when due. *See* defendant's affidavit at ¶ 5.

19. Defendant's arguments raised in her Motion to Dismiss fail to raise a triable issue of fact regarding M&T Bank's entitlement to judgment as a matter of law.

20. Defendant argues that M&T Bank's complaint fails to state a cause of action. This is wholly without merit.

21. The complaint alleges causes of action against the defendant for breach of contract and unjust enrichment. In order to properly allege a cause of action for breach of contract, a complaint must allege the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of the contract, and the ensuing damages from the breach. *See* U.S. Bank Nat'l Assn. v. Lieberman, 2012 N.Y. App. Div. LEXIS 5820 at \*2 (1st Dep't 2012).

22. In this case, the complaint against the defendant alleged the existence of a retail instalment contract entered into between the defendant and M&T Bank, that M&T Bank provided the defendant with funds to purchase a vehicle in fulfillment of the contract, and that defendant failed and/or refused to make payments according to the contract's terms. *See* Exhibit A at ¶ 3 – 8. Therefore, M&T Bank has sufficiently alleged a cause of action for breach of contract.

23. In order to allege a cause of action for unjust enrichment, a complaint must state that the defendant was enriched at the plaintiff's expense and that the interests of equity and justice dictate that the defendant should not be able to retain what it recovered from the plaintiff. See *Mandarin Trading Co. v. Wildenstein*, 16 N.Y.3d 173, 182, 919 N.Y.S.2d 465 (2011).

24. In this case, M&T Bank's alleged that the defendant was enriched in the amount of \$15,201.78 at the expense of M&T Bank, due to defendant's breach of the retail instalment contract. See Exhibit A at ¶ 9-11. M&T Bank also stated that the defendant's enrichment came through no fault of the plaintiff, so the interests of justice would be served by rectifying the defendant's enrichment. *Id.*

25. Since M&T Bank properly pled its causes of action against the defendant, this affirmative defense is without merit and should be disregarded.

26. Defendant also claims that M&T Bank does not have standing to bring this action. This claim is wholly without merit. M&T Bank contracted to lend the defendant the necessary funds to purchase the vehicle. See Whalen Affidavit at ¶ 3. M&T Bank's standing to bring this action is without question, and defendant's argument should therefore be disregarded.

27. To the extent that defendant may allege that M&T Bank failed to repossess and dispose of the Collateral in a commercially reasonable manner, this allegation also must fail. As set forth in the Whalen Affidavit, M&T Bank followed all prerequisites and gave all the required notices in connection with its repossession of the Collateral. M&T Bank arranged for the Collateral to be advertised for sale and disposed of at auction to the highest



bidder. As Caitlin Whalen avers, there was nothing unusual about the repossession and disposition of the Collateral and it was done in the same way that M&T Bank has handled the repossession and sale of similar vehicles.

28. Pursuant to New York UCC § 9-627(b), a sale is “commercially reasonably” if it takes place in a manner normal for any recognized market, if it yields a price that corresponds to fair market value for any recognized market at the time of the sale, or if the sale is “otherwise in conformity with reasonable commercial practices among dealers in the type of property that was subject to disposition.” *See* N.Y. U.C.C. § 9-627(b) (McKinney’s 2013). Sale of repossessed collateral by private auction has been held as a matter of law to be a commercially reasonable method of disposition. *Coxall v. Clover Comm. Corp.*, 4 Misc. 3d 654, 661-62, 781 N.Y.S.2d 567 (Civ. Ct. Kings County, June 8, 2004) *citing Charter One Auto Fin. Corp. v. Vaglio*, 2003 N.Y. Misc. LEXIS 253, \*5, 2003 NY Slip Op 50638(U) (Sup. Ct., Nassau Co., January 30, 2003). Accordingly, defendant’s blanket assertion that the sale was not commercially reasonable is without merit.

29. Defendant’s additional arguments are irrelevant, wholly without merit, and unsupported by any admissible evidence. Therefore, they are insufficient to deny M&T Bank judgment as a matter of law.

30. Defendant failed to make payments under the Contract, and therefore, is in breach of the agreement. Based on this breach, M&T Bank is entitled to summary judgment against the defendant, for the amount of \$16,922.12, plus accrued interest and late charges, together with all costs and attorneys’ fees. M&T’s entitlement to costs and attorneys’ fees arises out of the terms of the Contract.

31. For all of the reasons stated herein, defendant's Motion to Dismiss should be denied in its entirety, and M&T Bank's motion for summary judgment should also be granted in its entirety.

## **POINT II**

### **UCC 2-725 IS IRRELEVANT TO THIS ACTION BECAUSE THE CONTRACT IS GOVERNED BY THE MOTOR VEHICLE RETAIL INSTALMENT SALES ACT**

32. New York State Personal Property Law 9-301 *et. seq.*, also known as the Motor Vehicle Retail Instalment Sales Act, governs the sale of motor vehicles pursuant to retail instalment contracts. *See* N.Y. Pers. Prop. L. 9-301 (McKinney 2013).

33. Although N.Y. U.C.C. 2-725 purports to subject the sale of certain unenumerated goods and services to a four-year statute of limitations, UCC Article 2 specifically does not "impair or repeal *any statute regulating sales to consumers, farmers, or other specified classes of buyers.*" *See* N.Y. U.C.C. 2-102 (McKinney 2013).

34. Purchasers of motor vehicles through retail instalment contracts, such as the defendant, are members of a specified class of consumer buyers whose purchase transactions are regulated by the Motor Vehicle Retail Instalment Sales Act. Therefore, UCC Article 2 is inapplicable to this action. The Motor Vehicle Retail Instalment Sales Act defaults to the CPLR in terms of statutes of limitations, which sets a six-year limit on actions involving breach of contract. *See* N.Y. C.P.L.R. 213 (McKinney 2013). Since the action was commenced well within 6 years of the date of last payment, the action is timely and the defendant's motion to dismiss should be denied in its entirety.

### POINT III

#### EVEN IF FOUR YEAR STATUTE OF LIMITATIONS APPLIES A CAUSE OF ACTION EXISTS FOR EACH INSTALLMENT ACCRUED

35. It is undisputed that the contract between the parties was an installment contract. Therefore, when payments are due to the condition on an installment basis, a cause of action exists for each installment accrued. *Sce v. Ach*, 56 A.D.3d 457 (2<sup>nd</sup> Dept. 2008), *Medalie v. Jacobsen*, 120 A.D.2d 652 (2<sup>nd</sup> Dept. 1986).

36. An exception to this rule is, if the debt is accelerated, the statute begins to run when accelerated. *Alice A. Baker, Inc. v. Norton*, 192 Misc.2d 511 (Sup. Ct, Rensselaer County 2002).

37. Here, plaintiff did not accelerate the debt until June 26, 2018, when it mailed the deficiency notice to defendant and demanded payment in full of the deficiency balance. Therefore, the four-year statute of limitations did not begin to run until June 26, 2018. Plaintiff's commencement of this action, on March 30, 2022 was within that four-year period.

38. Since the action was commenced within four years of the date of acceleration, the action is timely and the defendant's motion to dismiss should be denied in its entirety.

39. Alternatively, if the court were to apply the four-year statute of limitations from the date of the first missed payment, plaintiff's entire action is not barred by the statute of limitations because defendant's failure to pay each installment payment due prior to acceleration

gives rise to a cause of action for that payment. Plaintiff, therefore, would only be barred from recovering the installments due February 6, 2018, and March 6, 2018, as this action was commenced March 30, 2022, within the four-year statute of limitations of each installment from April 2018 through June 2018 when the debt was accelerated.

#### **POINT IV**

#### **ATTORNEYS' FEES**

40. M&T Bank also is entitled to costs and attorneys' fees. Its entitlement to costs and attorneys' fees arises out of the terms of the Contract. *See* Whalen Affidavit, Exhibit A.

41. Your affirmant's firm handles this matter for M&T Bank on an hourly basis. The terms of the Contract allow M&T Bank to recover reasonable attorneys' fees plus costs. *See* Whalen Affidavit, Exhibit A. ("COLLECTION COSTS").

42. To date, your affirmant's firm's work on this matter includes:

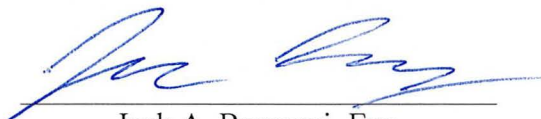
- a. The preparation, filing, and service of the summons and verified complaint;
- b. The review of defendant's answer;
- c. Telephone conversations with our client; and
- d. The preparation of plaintiff's motion for summary judgment.

43. M&T Bank respectfully requests an award based on actual attorneys' fees and costs incurred in the prosecution of this matter. As of the date of this motion, your affirmant's firm has expended 18.2 hours, with your affirmant spending 13 hours, partner Kyle

D. DiDone, Esq. expending 3.6 hours and paralegal Veronica Krause expending 1.6 hours. Attorneys' fees for collection matters at your affirmant's firm are \$225.00 per hour for partners, \$180.00 per hour for associates, and \$130.00 per hour for paralegals. Accordingly, M&T Bank's attorneys' fees – calculated on an hourly basis – total \$3,358.00. Additionally, M&T Bank has incurred costs and expenses in the amount of \$346.28.

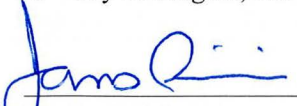
44. An award of \$3,358.00 in attorneys' fees and \$346.28 in costs and expenses is fair and reasonable in light of the specific contractual language concerning collection costs, the amount of time that your affirmant's firm has expended, the amount of time that your affirmant's firm will expend in enforcing M&T Bank's judgment, and the prevailing rates for legal services in New York.

**WHEREFORE**, M&T Bank respectfully requests that this Court grant it judgment against defendant Blanca Luciano a/k/a Blanca I. Luciano in the total amount of \$16,922.12, plus accrued interest, late charges, costs, and attorneys' fees, deny the defendant's motion to dismiss in its entirety, and grant such other and further relief that this Court deems just and proper.



Jack A. Bargnesi, Esq.

Sworn to before me this  
25<sup>th</sup> day of August, 2022.



Notary Public

**JAMES MATTHEW PHILLIPS**  
Notary Public, State of New York  
No. 02PH6397254  
Qualified in Erie County  
Commission Expires 09/03/2029

# EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**

-----X  
M&T Bank,

Plaintiff/Petitioner,

- against -

Index No. 706898/2022

Blanca Luciano a/k/a Blanca I. Luciano,  
Defendant/Respondent.

-----X

**NOTICE OF ELECTRONIC FILING  
(Mandatory Case)  
(Uniform Rule § 202.5-bb)**

**You have received this Notice because:**

- 1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and
- 2) You are a Defendant/Respondent (a party) in this case.

● **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

● **If you are not represented by an attorney:**

**You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.**

**If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.**

The **benefits of participating in e-filing** include:

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

**To register for e-filing or for more information about how e-filing works:**

- visit: [www.nycourts.gov/efile-unrepresented](http://www.nycourts.gov/efile-unrepresented) or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at [www.nycourts.gov](http://www.nycourts.gov)

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## EFM-1



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF QUEENS

Index No.: 706898/2022

M&T BANK  
475 Crosspoint Parkway  
Getzville, New York 14068,

Plaintiff,

vs.

CONSUMER CREDIT  
TRANSACTION  
(NON-CREDIT CARD)

BLANCA LUCIANO  
A/K/A BLANCA I. LUCIANO  
95 04 97th Street, Apt. 2nd Floor  
Ozone Park, New York 11416,

9309 103rd Avenue, Apt. 2  
Ozone Park, New York 11417,

Defendant.

**SUMMONS**

**TO DEFENDANT:**

**YOU ARE SUMMONED** to appear in this action by serving your answer to the complaint on the plaintiff's attorney within the time limits stated below.

Queens County is designated as the county where this action will be tried, because one or more of the parties to this action resides in that county.

**TIME LIMITS TO ANSWER:**


- (1) If this summons is served by delivery to you personally within New York State, you must answer the complaint within TWENTY (20) days after such delivery.
- (2) If this summons is not served by delivery to you personally within New York State, and not served pursuant to CPLR 312-a, you must answer the complaint within THIRTY (30) days after service is complete.

- (3) If this summons is served pursuant to CPLR 312-a, see accompanying STATEMENT OF SERVICE BY MAIL for time limits to answer.

**IF YOU FAIL TO ANSWER THE COMPLAINT** within the time stated, judgment will be entered against you for the relief demanded in the complaint.

Dated: March 22, 2022  
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC  
Attorneys for Plaintiff  
M&T Bank

By:   
\_\_\_\_\_  
Kyle C. DiDone, Esq.  
1600 Liberty Building  
Buffalo, New York 14202  
(716) 854-3400

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF QUEENS

Index No.: 706898/2022

M&T BANK,

Plaintiff,

vs.

BLANCA LUCIANO  
A/K/A BLANCA I. LUCIANO,

Defendant.

**VERIFIED COMPLAINT**

Plaintiff, M&T Bank, by its attorneys, Rupp Baase Pfalzgraf Cunningham LLC, as  
and for its verified complaint against the defendant alleges as follows:

1. At all times hereinafter mentioned, plaintiff, M&T Bank ("plaintiff"),  
was and is a New York banking corporation with a principal place of business located at  
475 Crosspoint Parkway, Getzville, New York.
2. Upon information and belief, at all times hereinafter mentioned,  
defendant Blanca Luciano ("defendant") was and is an individual residing at 95 04 97th Street,  
Apt. 2nd Floor, Ozone Park, New York or 9309 103rd Avenue, Apt. 2, Ozone Park, New York.

### **FACTUAL BACKGROUND**

3. On or about August 22, 2015, defendant executed a certain Retail Instalment Contract ("Contract"), pursuant to which plaintiff agreed to lend the defendant \$42,163.02, and defendant agreed to repay that amount in accordance with the terms of the Contract. A copy of the Contract is attached as Exhibit A.

### **FIRST CAUSE OF ACTION** **(Breach of Contract)**

4. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 3 of this complaint.

5. Defendant has breached the terms of the Contract by, among other things, failing and/or refusing to make payments in accordance with its terms.

6. Defendant failed to pay her February 28, 2018 monthly installment payment and all subsequent payments.

7. There is now due and owing the principal amount of \$15,201.78 from defendant to plaintiff with respect to the Contract.

8. By reason of defendant's breach of the Contract, plaintiff has been damaged, as of March 22, 2022, in the total amount of \$16,922.12, which consists of \$15,201.78

principal, \$1,082.42 interest, \$637.92 late fees, and \$0.00 miscellaneous fees, along with all costs, disbursements, and attorneys' fees.

**SECOND CAUSE OF ACTION**  
**(Unjust Enrichment)**

9. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 8 of this complaint.

10. By reason of the acts of the defendant, as aforesaid, and without any wrongdoing on the part of the plaintiff, defendant has been unjustly enriched to plaintiff's detriment.

11. By reason of the foregoing, plaintiff has been damaged in the principal amount of \$15,201.78.

WHEREFORE, plaintiff M&T Bank demands judgment as follows:

- (1) On its first cause of action, as against defendant, Blanca Luciano a/k/a Blanca I. Luciano in the total amount of \$16,922.12, plus accrued interest, late charges, costs, disbursements and attorneys' fees;
- (2) On its second cause of action, as against defendant, Blanca Luciano a/k/a Blanca I. Luciano in the principal amount of \$15,201.78, together with interest thereon;
- (3) The costs and disbursements of this action, together with any other or further relief as the Court may deem just and proper.

Dated: March 22, 2022  
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC  
Attorneys for Plaintiff  
M&T Bank

By: 

Kyle C. DiDone, Esq.

1600 Liberty Building  
Buffalo, New York 14202  
(716) 854-3400

VERIFICATION

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ERIE )

Jasen Davis, being duly sworn, deposes and says that he/she is a/an Vice President of M&T Bank, the corporation named in the within entitled action; that he/she has read the foregoing Summons and Verified Complaint and knows the contents thereof; and that the same is true to his/her own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he/she believes them to be true.

Deponent further says that the reason this verification is made by deponent and not by M&T Bank is because M&T Bank is a corporation and the grounds of deponent's belief as to all matters in the Summons and Verified Complaint not stated upon his/her own knowledge, are investigations which deponent has caused to be made concerning the subject matter of this Summons and Verified Complaint and information acquired by deponent in the course of his/her duties as an officer of said corporation and from the books and papers of said corporation.

Jasen Davis On this 25th day of March, 2022 before me personally came Jasen Davis who, being duly sworn, deposed and said that he/she is a/an Vice President of M&T Bank and that he/she has read the foregoing Verified Complaint, that he/she knows the contents thereof and that he/she has affixed his/her name with all requisite authority on behalf of M&T Bank.

Angela Marie Berninger  
Notary Public

ANGELA MARIE BERNINGER  
NOTARY PUBLIC STATE OF NEW YORK  
ERIE  
LIC. #01BE6376033  
COMM. EXP. 06/04/2022

# EXHIBIT A



**RETAIL INSTALLMENT CONTRACT (MOTOR VEHICLE - NY)**[illegible][illegible]

**DEATH CANCELLATION COVERAGE IS NOT REQUIRED:** Death Cancellation and Refund for the cancellation of your Contract by the Assignee you own, either this Contract or unless the value of the Vehicle in the event of a total loss of the Vehicle. This is sometimes called "Gap" coverage. GAP coverage is not required to obtain credit and will be provided without the cost of the Vehicle. The Assignee you own must agree to the assignment of this coverage, which means you want to have coverage and agree to pay the additional cost described in the "Termination or Amount Financed" section.

**MTB BANK**  
**Installment Loan Operations, One Fountain Plaza, P.O. Box 767**  
**Buffalo, New York 14240**

**CO-OWNER:** Any person who is not the Co-Owner of the Vehicle.

**CO-OWNER:** Any person signing the Co-Owner's Security Agreement below gives us a security interest in the Vehicle and agrees separately and together with all Co-Owner(s) and Buyer(s), in pursuant to the Security Agreement and all other parts of this Contract, to pay the "Pharmax to Pay" section.

**TERMS:** The terms shown in the boxes above, a part of this Contract.

**PROMISE TO PAY:** You promise to pay us the Total Cash Refund Amount in full by the                      day(s) of                      month(s) of                      year(s).

[illegible]

**NOTICE TO THE BUYER:** 1. Do not sign this Contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled-in copy of this Contract. 3. Under the law, you have the right to pay off in advance the full amount due. If you do so, you may, depending on the nature of the credit service charge, (a) pay off without penalty, or (b) under some circumstances, pay off with a reduced penalty.

**You hereby acknowledge receipt of a copy of this Contract.**  
**RETAIL INSTALLMENT CONTRACT**

SELLER STAR HYUNDAI, LLC BUYER Star Hyundai (SEAL) 08/22/2015  
BY: [Signature] Date 08/22/2015 (SEAL) \_\_\_\_\_  
BUYER [Signature] (SEAL) \_\_\_\_\_

**CO-SIGNER NOTICE**  
You agree to pay the debt identified above, although you may not personally receive any property, services or money. You may be sued for

Payments listed above does not include Finance Charges, interest, or attorney's fees, or other charges that are stated in the Contract. You will also have to pay some of all of these costs and charges as by the terms of the Contract. This notice is not the writing that obligates you to pay the debt. You have read the Retail Installment Contract, which contains the exact terms of your obligation, and the Co-Signer(s) Notice.

You have been given a completed copy of this Notice and each writing that obligates you or the Buyer on this Contract.

Signature of Co-Signer	Date	Signature of Co-Signer	Date
------------------------	------	------------------------	------

**CO-SIGNER: YOU SHOULD READ THE NOTICE TO CO-SIGNER ABOVE, BEFORE SIGNING THE CO-SIGNER'S AGREEMENT.**  
**CO-SIGNER'S AGREEMENT:** You, the Person (or persons) signing below as "Co-Signer," promise to pay to us all sums due on this Contract and to perform all obligations in this Contract. You intend to be legally bound by all the terms of this Contract, separately and together, with the Buyer. You are making this promise to induce us to make this Contract with the Buyer, and you agree to indemnify and hold us harmless from all claims against us even though we may not have made any demand for payment on the Buyer or exercised our security interest. You also acknowledge providing a completed copy of this Contract.

<u>K</u>	<u>C. S. HANCOCK'S SIGNATURE</u>	(SEAL)	<u>Address</u>	<u>Date</u>
<u>S</u>	<u>C. S. HANCOCK'S SIGNATURE</u>	(SEAL)	<u>Address</u>	

**CO-OWNER'S SECURITY AGREEMENT:** You, the person signing below as a "Co-owner", together with the Buyer(s) being all of the Owners of the Vehicle, shall be jointly and severally liable to the Seller for the full amount of the "Purchase Price" of the Vehicle. You are giving us the security interest to induce us to make this Contract with the Buyer, and to secure the payment by the Buyer of all sums due on this Contract. You will not be responsible for any deficiency.

which might be due after representation and sale of the Vehicle.

X \_\_\_\_\_ Address \_\_\_\_\_ (S/S)

Co-Owner's Signature

**ASSIGNMENT**

The Seller agrees to be bound by all conditions of this Contract. Also, for the purpose of this contract, it is hereby agreed, herein, the Seller do, explain this Contract to the Assignee.

performed to and subject to all terms and conditions of the master assignment currently in effect between Seller and Assignee and (b) making, with respect to this Contract, all warranties and representations set forth in such master agreement. Whether or not Seller signs this Assignment, it Assigns herein assignment of this Contract from the Seller, then such assignment shall be deemed to be "without recourse," pursuant to the "Under Agreement," and made as of the date of this Contract. For purposes of this Assignment, Seller hereby appoints Assignee as its authorized agent to supply any necessary documents to the Buyer.

Name of Seller	Signature and Title of Person signing for Seller	
<b>No Cooling Off Period</b>		
State law does not provide for a "cooling off" or other cancellation period for this Contract. Therefore, you cannot later cancel this Contract.		

simply because you change your mind or wish you had acquired a different item. After you sign above, you may only cancel this Contract for legally valid reasons.

Interest Rate	3%
(For Internal Use Only)	

TRIPLE COPY- L1CC NON-AUTHORITATIVE COPY

ance, which costs \$ _____	Insurance, which costs \$ _____ N/A	your age? _____	age to be insured _____
ature of Buyer to be insured for Single Credit untary Unemployment Insurance	1. X _____	_____	_____
or: _____ Term: _____	2. X _____	_____	_____
	Signatures of both Buyers to be insured for Joint Credit Involuntary Unemployment Insurance	_____	_____
	Insurer: _____ Term: _____	_____	_____

**CANCELLATION COVERAGE IS NOT REQUIRED:** Debt Cancellation Coverage provides for the cancellation of your liability for amounts you owe under this Contract in excess of the of the Vehicle in the event of a total loss of the Vehicle. This is sometimes called "GAP" coverage. GAP coverage is not required to obtain credit and will not be provided unless it is a and you sign a separate GAP Notice requesting GAP coverage, which means you want GAP coverage and agree to pay the additional cost disclosed in the "Itemization of Amount Due".

**NOTE:** We intend to assign this Contract and Security Agreement to the Assignee named in this provision. If the Assignee assigns the Contract to a subsequent assignee, the term also to such subsequent assignee. After the assignment, all rights and benefits of the Seller in this Contract and in the Security Agreement shall belong to and be enforceable by the assignee. The Assignee's name and address is:

**M&T BANK**  
Installment Loan Operations, One Fountain Plaza, P.O. Box 767  
Buffalo, New York 14240

**INNER:** Any person signing the Co-Signer's Agreement below promises separately and together with all Co-Signer(s) and Buyer(s), to pay all sums due and to perform all agreements in this Contract. Co-Signer will not be an owner of the Vehicle.

**NOTE:** Any person signing the Co-Owner's Security Agreement below gives us a security interest in the Vehicle and agrees separately and together with all Co-Owner(s) and Buyer(s), to pay all amounts due under the Security Agreement and all other parts of this Contract except the "Promise to Pay" section.

The terms shown in the boxes above are part of this Contract.

**SE TO PAY:** You agree to pay us the Total Sale Price for the Vehicle in U.S. funds by the Total Down Payment, and paying us the Amount Financed plus the credit charge (called "Interest" in this Contract) at the Annual Percentage Rate shown. You promise to make payments in accordance with the Payment Schedule. You agree to make payments on or before the same day of each month as the first payment. You agree to pay all other amounts which may become due under the terms of this Contract. You agree to make payments at the place or to send payments to the which the Assignee most recently specifies in the written notice to you.

**SECURITY AGREEMENT:** To secure the payment of all sums due and the performance of all required obligations under this Contract, you give us a security interest in the Vehicle, in all parts (called "Accessions") attached to the Vehicle at any later time, and in any proceeds of the Vehicle, including insurance proceeds.

**ADDITIONAL TERMS AND CONDITIONS:** THIS CONTRACT CONTINUES ON THE REVERSE SIDE. YOU ARE OBLIGATED TO ALL THE TERMS OF THE CONTRACT WHICH APPEAR ON THE FRONT AND REVERSE SIDES.

**Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to be a part of the Finance Charge.**

**SE TO THE BUYER:** 1. Do not sign this Contract before you read it or if it contains any blank space. 2. You are entitled to a fully filled-in copy of this Contract. 3. Under the law, you have the right to pay off in advance the full amount due. If you do, you may, depending on the nature of the credit service charge, either (a) prepay without penalty, or (b) under some instances obtain a rebate of the credit service charge. 4. According to law you have the privilege of purchasing the insurance motor vehicle provided for in this Contract from an agent or broker of your own selection.

Below, we agree to sell the Vehicle to you under the terms of this Contract.

You hereby acknowledge receipt of a copy of this Contract.

RETAIL INSTALLMENT CONTRACT

STAR HYUNDAI, LLC



08/22/2015  
(SEAL) Date

BUYER X

BUYER X

08/22/2015

(SEAL) Date

(SEAL) Date

#### CO-SIGNER NOTICE

see to pay the debt identified above, although you may not personally receive any property, services or money. You may be sued for it, although the person who receives the property, services or money is capable of paying the debt. You should know that the Total of the listed above does not include Finance Charges resulting from delinquency, late charges, repossession or foreclosure costs, court costs and fees, or other charges that are stated in the Contract. You will also have to pay some or all of these costs and charges as required by the terms of the Contract. This notice is not the writing that obligates you to pay the debt. You have read the Retail Installment Contract, which is the exact terms of your obligation, and the Co-Signer(s) Notice.

has been given a completed copy of this Notice and each writing that obligates you or the Buyer on this Contract.

If Co-Signer _____	Date _____	X Signature of Co-Signer _____	Date _____
--------------------	------------	-----------------------------------	------------

**YOU SHOULD READ THE NOTICE TO CO-SIGNER ABOVE, BEFORE SIGNING THE CO-SIGNER'S AGREEMENT.**

**"S AGREEMENT:** You, the person for personal signing below as "Co-Signer", promise to pay to us all sums due on this Contract and to perform all agreements in this Contract. You are making this promise to induce us to make this Contract with the Buyer, and we will use the proceeds only for the Buyer's benefit. You agree to pay even though we may not have made any prior demand for payment on the Buyer or exercised our right. You also acknowledge receiving a completed copy of this Contract.

Signature _____ (SEAL)	Address _____	Date _____
Signature _____ (SEAL)	Address _____	Date _____

**SECURITY AGREEMENT:** You, the person signing below as "Co-Owner", together with the Buyer(s) being all of the Owners of the Vehicle, give us a security interest in the Vehicle above. You agree to be bound by the terms of the Security Agreement and all other parts of this Contract except the "Promise to Pay" section. You are giving us this to induce us to make this Contract with the Buyer, and to secure the payment by the Buyer of all sums due on this Contract. You will not be responsible for any deficiency due after repossession and sale of the Vehicle.

Signature _____	Address _____	Date _____
-----------------	---------------	------------

#### ASSIGNMENT

as to be bound by all provisions of this Contract. Also, for value received and intending to be legally bound hereby, the Seller (a) assigns this Contract to the Assignee subject to all terms and conditions of the dealer agreement currently in effect between Seller and Assignee and (b) makes, with respect to this Contract, all warranties and set forth in such dealer agreement. Whether or not Seller signs this Assignment, if Assignee takes assignment of the Contract from the Seller, then such assignment shall be without recourse, pursuant to the dealer agreement, and made as of the date of the Contract. For purposes of this Assignment, Seller hereby appoints Assignee as its agent to supply any missing signature of Seller hereunder.

Name of Seller _____	Signature and Title of Person Signing for Seller _____
----------------------	--

#### No Cooling Off Period

does not provide for a "cooling off" or other cancellation period for this Contract. Therefore, you cannot later cancel this Contract for any reason you change your mind or wish you had acquired a different item. After you sign above, you may only cancel this Contract for reasons.

NYSDSS-13 4/7/2004  
Financial Services - BANCORP

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.  
ORIGINAL - VEHICLE - BUYER'S COPY - Co-Signer - CO-SIGNER'S COPY - Pink - SELLER'S COPY - Green

Interest Rate \_\_\_\_\_ %

TRUE COPY- UCC NON-AUTHORITATIVE COPY

TRUE COPY- UCC NON-AUTHORITATIVE COPY

# EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Plaintiff / Petitioner:

M&T BANK

Defendant / Respondent:

BLANCA LUCIANO A/K/A BLANCA I. LUCIANO

STATE OF NEW YORK )

COUNTY OF NASSAU )

AFFIDAVIT OF SERVICE

Index No:

706898/2022

Date Filed: March 30, 2022

The undersigned being duly sworn, deposes and says: deponent is not a party herein, is over 18 years of age and resides in New York State. That on Mon, Jun 13 2022 AT 07:59 PM AT 99-09 103RD AVENUE APT. 2, OZONE PARK, NY 11417 deponent served the within NOTICE OF ELECTRONIC FILING (MANDATORY CASE), SUMMONS and VERIFIED COMPLAINT bearing INDEX# 706898/2022 and a date of filing of March 30, 2022 upon BLANCA LUCIANO A/K/A BLANCA I. LUCIANO defendant therein named.

- ☒ Individual: by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- ☐ Corporation: a defendant, therein named, by delivering a true copy of each to \_\_\_\_\_ personally, deponent knew said corporation so served to be the corporation described, and knew said individual to be thereof.
- ☐ Suitable Person: by delivering thereto, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- ☐ Affixing to Door: by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereto, having called thereon; at \_\_\_\_\_
- ☐ Mailing: Deponent also enclosed a copy of same, in a postpaid sealed wrapper marked personal and confidential properly addressed to said defendant at defendant's last known residence, \_\_\_\_\_, to be mailed by first class mail and depositing said wrapper in a post office, official depository, under the exclusive care and custody of the United States Post Office department, with New York State. Mailed on \_\_\_\_\_
- ☒ Military Service: I asked the person spoken to whether defendant was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. The source of my information and the ground of my belief are the conversations and observations narrated. Upon information and belief I aver that the defendant is not in the military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Description:

Age: 30-35 Skin Color: Hispanic Gender: Female Weight: 161-200  
Height: 5'4" Hair: Black Eyes: Black Relationship: \_\_\_\_\_  
Other Hair-Black with blonde streaks

Sworn to before me on 6-13-22

Monica Dopwell  
1240610

Notary Public

GINA MARIE EANNUCCI  
Notary Public - State of New York  
NO. 818A5075334  
Qualified in Nassau County  
My Commission Expires Mar 31, 2023

**EXHIBIT C**



NYSCEF DOC. NO. 3

Instructions: FILL IN THE NAMES OF THE PARTIES AND THE INDEX NUMBER. COMPLETE THE  
BLANK SPACES NEXT TO THE INSTRUCTIONS PRINTED IN BOLD TYPE. PRINT AND USE BLACK  
INK ONLY. SIGN YOUR NAME IN THE PRESENCE OF A NOTARY PUBLIC.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X

M&T Bank,

Index No. 706898 / 2022

Plaintiff,

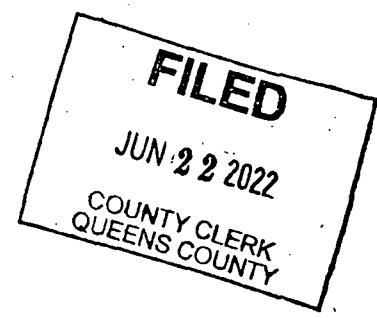
ANSWER

- against -

Blanca Luciano / Bianca I. Luciano

Defendant.

-----X



As and for his/her answer to the complaint herein, the defendant \_\_\_\_\_

Blanca Luciano respectfully shows and alleges as follows:

   Admits the truth of the allegations of Paragraph(s) \_\_\_\_\_

\_\_\_\_\_ of the complaint.

☒ Denies knowledge or information sufficient to form a belief as to the truth  
of the allegations of Paragraph(s) \_\_\_\_\_

\_\_\_\_\_ of the complaint.

☒ Denies the allegations of Paragraph(s) 1-3

\_\_\_\_\_ of the complaint.

☒ Paragraphs 4-11

Paragraphs 1-3

AFFIRMATIVE DEFENSES

This statement is in response to your claim in regard the debt mention above. please be aware that this is not a acknowledgment or acceptance of the debt. I have not received any verification or any invoice in the passed 4.



COUNTERCLAIMS

years or any dept.

The car was given back to the bank. Voluntary, the bank was notify that at that point of me returning the car I could no longer meet the terms of my loan agreement. Mt bank never send me a letter or any invoice stating that I owe any outstanding balance. at this point I cannot afford to pay the amount of the balance may say I owe.

WHEREFORE, defendant prays that this Court dismiss the complaint of the plaintiff herein, with costs and disbursements to defendant, together with such other relief the Court finds to be just and proper.

Dated: 06/22/22

Blanca Luciano  
Signature

Blanca Luciano  
Print Name

9309 103<sup>rd</sup> Ave

Ozone Park NY 11417

718-705-2091

Defendant's Address and  
Telephone Number

VERIFICATION

Blanca Luciano

, being duly sworn, deposes and says:

I am the defendant. I have read the foregoing answer and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true. To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22 NYCRR).

Blanca Luciano 06/22/22  
Sign Name

Blanca Luciano  
Print Name

Sworn to before me this.

22<sup>nd</sup> day of June, 2022

[Signature]  
Notary Public

ANNA LISA S. ENRIQUEZ  
Notary Public - State of New York  
No. 04EN6405207  
Qualified in Queens County  
Commission Expires March 2, 2024

# EXHIBIT D

Defendant(s).

Index No.:  
706898/2022

AMENDED  
ANSWER

PLEASE TAKE NOTICE that Defendant Blanca Luciano ("Ms. Luciano"), by her attorney, Matthew Schedler, Esq., Of Counsel to Elizabeth Miller, Esq., CAMBA Legal Services Inc., hereby appears in this proceeding and interposes the following Amended Answer to the Complaint:

1. The Defendant lacks sufficient knowledge and information to admit or deny the allegations in paragraph 1 of the Complaint.
2. The Defendant admits she is a current resident of Queens County.
3. The Defendant denies the allegations in paragraph 3 of the Complaint.
4. The Defendant denies the allegations in paragraph 4 of the Complaint.
5. The Defendant admits the allegations in paragraph 5 of the Complaint.
6. The Defendant admits the allegations in paragraph 6 of the Complaint.
7. The Defendant denies the allegations in paragraph 7 of the Complaint.
8. The Defendant denies the allegations in paragraph 8 of the Complaint.
9. The Defendant denies the allegations in paragraph 9 of the Complaint.

10. The Defendant denies the allegations in paragraph 10 of the Complaint.
11. The Defendant denies the allegations in paragraph 11 of the Complaint.

### FACTUAL ALLEGATIONS

#### Background and the Terms of the Sale

12. On or about August 22, 2015, the Defendant ("Ms. Luciano") executed a Retail Installment Contract (the "Contract") to purchase a 2016 Hyundai Santa Fe (the "Vehicle"), from Star Hyundai, LLC ("Star Hyundai") for a total price of \$54,634.72. The Contract attached to the Complaint is not legible, but to the best of our knowledge the cash price of the Vehicle was \$38,866.52 to which a \$1,750.00 down payment was credited. The total amount financed, which included a \$3,999.00 add-on titled "Term Care Select," was \$42,183.02. Ms. Luciano agreed to pay by making 84 monthly payments of \$629.34 beginning on October 6<sup>th</sup>, 2015. The finance charge for paying over time was \$10,721.70.
13. At the time the Contract was executed, Ms. Luciano traded in her 2012 Hyundai Santa Fe ("2012 Santa Fe"). The Contract assigned a \$21,251.15 trade-in value to the 2012 Santa Fe. Per the Contract, this amount was equal to the remaining balance owed for the 2012 Santa Fe.
14. Upon information and belief, the trade in value was not equal to the balance owed on the 2012 Santa Fe. Upon information and belief, the 2012 Santa Fe had negative equity, meaning more was owed on the car than it was worth. Upon information and belief, the car dealer, Star

Hyundai, LLC, inflated the value of trade in to make the sale more appealing to Ms. Luciano and potential finance companies. Upon information and belief, Star Hyundai, made up the lost profit by increasing the cost of the car or by including illusory add-ons.

15. Star Hyundai immediately assigned the Contract to the Plaintiff ("M&T Bank").

16. The FTC's Rule on Preservation of Consumer's Claims and Defenses ("FTC Holder Rule"), 16 C.F.R. Part 433.2, requires that every consumer contract contain a clause subjecting holders of the contract to all the claims and defenses that the consumer has against the seller. This holder in due course language states:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

17. The contract attached as Exhibit A to the Plaintiff's complaint does not contain this language but also does not include the reverse side of the contract, where additional terms and conditions are contained. Upon information and belief, the holder rule language is on the reverse side of the contract.

18. The Contract is for a vehicle Ms. Luciano used primarily for personal, family, and household purposes, and is therefore a consumer contract.

16 C.F.R Part 433.1. Because M&T Bank is the current holder of Ms. Luciano's Contract, Ms. Luciano can assert any claims or defenses against M&T Bank that she could have asserted against Star Hyundai.

**Repossession and Sale of the 2016 Santa Fe**

19. In 2018, Ms. Luciano's work hours were cut, leaving her unable to continue making payments on the Vehicle. In order to avoid defaulting on the Vehicle, Ms. Luciano contacted M&T Bank and informed them of her financial situation. Ms. Luciano was told to voluntarily surrender the Vehicle, which she proceeded to do. After voluntarily surrendering the Vehicle, M&T told Ms. Luciano that that she no longer owed money on the Vehicle.
20. After this exchange with M&T Bank, Ms. Luciano ceased making her monthly installment payments. Ms. Luciano defaulted on February 6<sup>th</sup> of 2018 when she missed that month's payment.
21. After voluntarily surrendering the car in 2018, the Defendant did not receive any communications regarding the Contract or the Vehicle, including any notices required under N.Y. Pers. Prop Law § 316, N.Y. Gen. Oblig. Law § 7-401, N.Y. U.C.C. § 9-611, or N.Y. U.C.C. § 9-616.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

22. The Defendant does not owe this debt.

**Second Affirmative Defense**

23. Plaintiff's action is barred by the relevant statute of limitations.

**Third Affirmative Defense**

24. Plaintiff fails to state a claim upon which relief can be granted.

**Fourth Affirmative Defense**

25. Plaintiff lacks standing to bring this suit.

**Fifth Affirmative Defense**

26. The Plaintiff did not dispose of the collateral in a commercially reasonable manner in violation of N.Y. U.C.C. § 9-610.

**Sixth Affirmative Defense**

*[Deceptive Acts and Practices]*  
N.Y. Gen. Bus. Law § 349

27. The facts set forth in the paragraphs above are repeated and realleged.

28. By falsely representing that the 2012 Santa Fe's trade-in value was equal to the amount still owed on its financing contract, Star Hyundai deceived the Defendant into believing that there was no negative equity on her 2012 Santa Fe. In actuality, the cost of the 2012 Santa Fe's negative equity was hidden in the Contract via the inflated cost of the 2016 Santa Fe and in illusory add-ons. This made the sale of the 2016 Santa Fe appear more appealing to the Defendant than it was.

29. Automobile sales and financing are heavily regulated on both the State and Federal levels because of a history of deceptive practices aimed at



luring consumers into unaffordable loans. The Dealer, Star Hyundai, is in the business of selling automobiles to similarly situated customers. Accordingly, its use of unlawful practices has a broad impact on consumers at large.

30. Plaintiff is liable for the Dealer's conduct under the final paragraph of 16 C.F.R. § 433.2 ("the FTC Holder Rule"). This rule requires that the following language is included in all consumer contracts:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

31. M&T only attaches the front page of their contract to the complaint, eliminating all the terms and information included on the back of the contract. Upon information and belief, the back of the contract contains the required holder in due course language.
32. As a direct and proximate result of the Dealer's acts, omissions, misrepresentations and concealments, Defendant has suffered past, present, and future damages, including damages caused by Star Hyundai's misrepresentation of the 2012 Santa Fe's negative equity. By deceiving Ms. Luciano into believing that her trade in vehicle did not have negative equity, Star Hyundai deprived Ms. Luciano of the opportunity to make an educated choice regarding the purchase of the

2016 Santa Fe. Had Ms. Luciano known that she had negative equity on her previous vehicle, and that the purchase price of the new Vehicle was higher because of that negative equity, she may have chosen to not purchase the new Vehicle.

**Eighth Affirmative Defense**

33. Plaintiff is barred from recovery herein by the doctrine of unclean hands.

**Ninth Affirmative Defense**

34. Plaintiff failed to mitigate damages.

**Tenth Affirmative Defense**

35. The Defendant disputes the amount of the debt.

**Eleventh Affirmative Defense**

36. Plaintiff is barred from recovery herein by the defense of unconscionability.

**Twelfth Affirmative Defense**

37. Plaintiff has breached its duty of good faith and fair dealing.

**Thirteenth Affirmative Defense**

38. The contract may be rescinded due to misrepresentation.

**Fourteenth Affirmative Defense**

*[Failure to Issue Notice of Redemption Rights]*  
N.Y. Pers. Prop. Law § 316 and N.Y. Gen. Oblig. Law § 7-401

39. The facts set forth in the paragraphs above are repeated and realleged.

40. By failing to provide to Defendant a notice of redemption rights, Plaintiff violated N.Y. Pers. Prop. Law § 316 and N.Y. Gen. Oblig. Law § 7-401.

**Fifteenth Affirmative Defense**  
*[Failure to Issue Notice before Disposition of Collateral]*  
N.Y. U.C.C. § 9-611

41. The facts set forth in the paragraphs above are repeated and realleged.

42. By failing to provide Ms. Luciano a notice before disposition of the 2016 Santa Fe Plaintiff violated N.Y. U.C.C. § 9-611.

**Sixteenth Affirmative Defense**  
*[Failure to Issue Notice of Deficiency]*  
N.Y. U.C.C. § 9-616

43. The facts set forth in the paragraphs above are repeated and realleged.

44. By failing to provide to Defendant a notice of deficiency, Plaintiff violated the N.Y. U.C.C. § 9-616.

**Prayer for Relief**

**WHEREFORE**, Ms. Luciano respectfully asks that this Court enter a judgment

- A. Dismissing the Complaint in its entirety and with prejudice as against costs and disbursements incurred by the Defendant incurred in this action;
- B. Awarding actual and statutory damages, along with reasonable attorney's fees and costs;
- C. Awarding such other and further relief as the Court deems proper.



*[Handwritten signature]*

9 of 9

# EXHIBIT E

**M&T Bank**

Consumer Lending  
Department  
Remarketing Support  
P.O. Box 2187  
Buffalo, New York  
14240

5/3/2018 1:22:06 PM

**NOTICE OF OUR PLAN TO SELL PROPERTY**

BLANCA I LUCIANO  
95 04 97TH ST APT 2FL  
OZONE PARK, NY 11416

Retail Installment Sale Contract Account Number: (the "Contract")  
Collateral: 2016 HYUNDAI SANTA FE S (the "Collateral")  
VIN

We have your Collateral because you broke promises in our agreement. We will sell the Collateral at private sale sometime after 5/18/2018.

The money that we get from the sale (after paying our expenses) will reduce the amount you owe. If we get less money than you owe, you will still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time by paying the full amount you owe (not just the past due payments) including our expenses. If you cannot pay the full amount you must pay, call us at 1-800-724-8644. You can also get it back for less. For additional information, see below.

If you want us to explain to you in writing how we have figured the amount you owe us, you may call us at 1-800-724-8644 or write to M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240 and request a written explanation. If you need more information about the sale call us at 1-800-724-8644 or write us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240.

We are sending this notice to the following other people who have an interest in the Collateral or who owe money under the agreement:

(names of all other debtors and creditors, if any)

**Additional Information:**

**Getting the Vehicle Back:** At any time before the sale, we will allow you to get the Collateral back and reinstate your Contract by paying certified funds to M&T all past due installment payments under your Contract (including all late charges), plus our expenses. You must mail your payment to M&T Bank, PO Box 844, Buffalo, NY 14240. The amount you must pay to reinstate your Contract and get the Collateral back as of the date of this notice is as follows:

REPAYMENTS ON YOUR ACCOUNT:	\$1,348.92
LATE CHARGES:	\$ 354.63
REPOSSESSION FEES:	\$ 275.00
<b>TOTAL AMOUNT DUE:</b>	<b>\$1,978.55</b>

Right to Redeem:

You also have the right to get the Collateral back at any time before we sell it by paying us the full amount you owe (not just the past due payments) including our expenses ("redeem"). You may call us at 1-800-724-8644 or write us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240 to obtain information concerning the amount due to redeem the Collateral and to arrange to redeem the Collateral. As of the date of this notice, the amount required to redeem the Collateral is:

Unpaid principal balance:	\$33,074.61
Accrued finance charges:	\$ 131.37
Unpaid late charges:	\$ 354.63
Repossession expenses:	\$ 275.00
Sale preparation expenses:	\$ 200.00
Storage expenses:	\$ 20.00
Attorney fees incurred:	\$ 0.00
Legal costs incurred:	\$ 0.00
Other amounts due (itemize and describe)	

Amount Required to Redeem: \$34,055.61

The longer you wait, the more you may have to pay to get the Collateral back. The amount of finance charges you owe will increase each day you pay after the date of this notice. We may also incur additional expenses for which you may be responsible including the reasonable expenses of repossessing, holding, preparing for sale and selling the property and reasonable attorneys' fees and legal expenses, as permitted by law. Your right to reinstate the Contract or to redeem the Collateral by paying all that you owe continues until the Collateral is sold. If you wish to get the Collateral back, you may obtain updated information concerning the amount required or discuss your options for getting the Collateral back by calling us at 1-800-724-8644 or by writing us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240.

We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit record.

As noted above, you are entitled to an accounting of the unpaid indebtedness secured by the Collateral we intend to sell. You may request an accounting by calling 1-800-724-8644.

If you have filed for relief under the United States Bankruptcy Code, please understand that this Notice is given to you as a requirement of the law and is not an attempt to collect a debt, including any deficiency after the sale. If you have not filed for relief under the United States Bankruptcy Code, then this is an attempt to collect a debt and any information obtained will be used for that purpose.

If you have any questions regarding this Notice, or would like to obtain information regarding the debt secured by the Collateral or the intended sale of the Collateral as described above, please contact us immediately by calling 1-800-724-8644 or by writing to us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240. The office hours associated with our phone number 1-800-724-8644 are Monday through Thursday 8:00 am - 9:00 pm, EST and Friday 8:00 am - 5:00 pm EST.

Sincerely,

Ms. Deborah Fock  
Repossession Specialist

# EXHIBIT F



June 26, 2018

Blanca I Luciano  
95 04 97th St Apt 2FL  
Ozone Park NY 11416

RE: Name: Blanca I Luciano  
Account #:  
Collateral: 2016 Hyundai Santa Fe-S

Dear Blanca I Luciano:

Please be advised that your repossessed collateral was sold at a private auction on 6/21/2018. Here is a description of how we applied the proceeds from the auction to your account balance and calculated the deficiency of \$17,709.22 (the amount you owe us) after the sale:

Payoff prior to Auction Date:	\$33,456.22
Less: Auction Proceeds:	\$16,600.00
Equals: Obligation after proceeds	\$16,856.22
Plus: Auction Expense:	\$ 578.00
Plus: Repossession Expense:	\$ 275.00
Less: Credits	\$ .00
Equals: Total Amount Due	\$17,709.22

Future debits, credit charges, interest and expenses, if any, may increase the amount of the deficiency. Please contact me immediately to make arrangements for payment of the remaining amount due.

If you have filed for relief under the United States Bankruptcy Code, please understand that this notice is given to you for informational purposes only. We provide you with an accounting of the sale of the collateral and not an attempt to collect a debt or any deficiency after the sale.

However, if you have not filed for bankruptcy, you are not entitled to protection under the Bankruptcy Code, this is an attempt to collect a debt and any information obtained will be used for that purpose.

If you want additional information about this transaction, you may contact us at 1-800-724-8644 or write to us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240. The office hours associated with our phone number 1-800-724-8644 are Monday through Thursday 8:00 am – 9:00 pm, EST and Friday 8:00 am – 5:00 pm EST.

Sincerely,

Beth MacPherson  
Workout Specialist

# EXHIBIT G

June 27, 2018

Blanca I Luciano  
95 04 97th St Apt 2FL  
Ozone Park, NY 11416

RE: Account #

Dear Blanca I Luciano:

At M&T Bank, we understand that your financial situation may change over time. That's why we are writing to let you know that we may be able to help with our payment relief program.

To qualify for this program, you will need to provide the reason for your financial hardship, type of income source and commitment to pay the account in full. We will base your new monthly payment amount on your outstanding principal balance and, as a courtesy to you, will waive any accrued interest and late fees to date. Your remaining terms on your account may change as a result of the lowered monthly payment. Your interest rate may also be lowered.

Current Balance: \$16,720.61  
Term: 85 Months  
Interest Rate: 7%  
Estimated Monthly Payment: \$246.71

To obtain more information or to now take advantage of this opportunity, please contact our office at 1-800-724-8644. Representatives are available Monday through Thursday from 8:00am-9:00pm and Friday 8:00am-5:00pm EST.

Sincerely,

M&T Bank

Beth MacPherson  
Collection Representative

PLEASE NOTE:

This is not an offer for new credit or a refinance of your existing account. Except to the extent that payment terms may be modified, all other terms and conditions of the original account documents remain in full force and effect.

Nothing herein shall constitute a waiver of any rights or remedies of M&T Bank under applicable account documents or at law, all of which rights and remedies are specifically reserved. To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this correspondence is for compliance or informational purposes only and does not constitute an attempt to collect or impose personal liability for such obligation. However, if you have not filed for bankruptcy, we may attempt to collect a debt and any information obtained will be used for that purpose.

COPY

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF QUEENS

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M&T BANK,

Plaintiff,

Index No.: 706898/2022

vs.

BLANCA LUCIANO  
A/K/A BLANCA I. LUCIANO,

Defendant.

---

**AFFIDAVIT**

STATE OF NEW YORK     )  
                                  )  
COUNTY OF ERIE         )     ss:

CAITLIN WHALEN, being duly sworn, deposes and says:

1. I am an Assistant Vice President for M&T Bank, plaintiff in this matter. As part of my job duties, I handle the loan file for the plaintiff. I have worked extensively on this matter, and, as such, I have reviewed all of the corporate records, files, and documents related thereto. Therefore, I am fully familiar with the facts and circumstances set forth herein, and I make this affidavit upon personal knowledge.

2. I make this affidavit in support of M&T Bank's motion for summary judgment and in opposition to defendant's motion to dismiss.

3. On or about August 22, 2015, defendant Blanca Luciano a/k/a Blanca I. Luciano (“defendant”) executed a certain retail installment contract (“Contract”), pursuant to which plaintiff agreed to lend the defendant the amount of \$42,163.02 to finance the purchase of a 2016 Hyundai Santa Fe-S, and the defendant agreed to repay that amount in accordance with the terms of the Contract. A copy of the Contract is attached hereto as Exhibit A. The Contract is a business record executed contemporaneously at the time of the transaction. It was prepared within the normal course of business for M&T Bank, and it is within M&T Bank’s normal course of business of extending consumer loans to execute agreements such as the Contract at or near the time of the transaction.

4. The Contract served to finance defendant’s acquisition of a 2016 Hyundai Santa Fe-S (the “Collateral”). Pursuant to the terms of the Contract, M&T Bank held a valid security interest in the Collateral.

5. Defendant breached the terms of the Contract by, among other things, failing and/or refusing to make payments in accordance with its terms. Defendant defaulted on the February 2018 payment and all subsequent payments.

6. Based on defendant’s default, M&T Bank initiated the repossession of the Collateral.

7. On or about May 3, 2018, plaintiff sent defendant a “notice of our plan to sell property.” The notice informed defendant she breached the contract, that plaintiff intends to

sell the collateral, and that defendant will be responsible for any deficiency. The notice further informed defendant of her right to redeem the Collateral and the amounts due and owing to bring her account current and cure the default. A copy of the notice of our plan to sell property is attached as Exhibit B.

8. The notice clearly states that "The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you will still owe us the difference. If we get more money that you owe, you will get the extra money, unless we must pay it to someone else." See Exhibit B.

9. Defendant did not cure her default in response to the notice of our plan to sell property. Defendant also did not object to the terms of the notice of repossession and sale.

10. Accordingly, M&T Bank proceeded to sell the Collateral. On or about June 21, 2018, the Collateral was sold at a private auction for \$16,600.00.

11. On June 26, 2018, M&T Bank sent defendant a letter advising her of the sale and providing her with an accounting of the auction proceeds, the auction and repossession expenses, and the remaining deficiency balance owed to M&T Bank. A copy of M&T Bank's June 26, 2018 letter informing defendant of the sale and application of the proceeds is attached as Exhibit C.

12. Based on my experience in the sale and repossession of similar vehicles, M&T Bank conducted itself in a commercially reasonable manner. Disposal of the Collateral by private auction is commercially reasonable and a standard practice among dealers of similar collateral.

13. Additionally, M&T Bank provided defendant with the proper notices, incurred reasonable expenses to repossess and dispose of the Collateral, and applied the proceeds of the sale accordingly. The repossession and auction expenses incurred in connection with the repossession and sale of the Collateral are consistent with expenses incurred in similar repossession sales that I have worked on in the past for M&T Bank.

14. Taking into account the proceeds generated by the sale of the Collateral, defendant continues to owe the principal amount of \$15,201.78 in principal, plus all accrued interest, costs, and attorneys' fees. Defendant has failed and/or refused to pay this deficiency balance due and owing.

15. Based on defendant's failure to pay the remaining balance due and owing, M&T Bank elected to commence this action.

16. By reason of defendant's breach of the Contract, M&T Bank has been damaged in the principal amount of \$15,201.78, plus accrued interest, which as of March 22, 2022 totals \$1,082.42, late charges in the amount of \$637.92, costs, disbursements, and attorneys' fees.



WHEREFORE, M&T Bank respectfully requests that this Court grant it judgment against defendant Blanca Luciano a/k/a Blanca I. Luciano in the principal amount of \$15,201.78, plus accrued interest, late charges, costs, and attorneys' fees; together with such other and further relief that this Court deems just and proper.

Caitlin E. Whalen  
Caitlin E. Whalen  
Assistant Vice  
President

Sworn to before me this  
29th day of August, 2022.

  
Notary Public

ANGELA M. BERNINGER  
NOTARY PUBLIC STATE OF NEW YORK  
ERIE COUNTY  
LIC. #01BE6976033  
COMM. EXP. 06/04/2026

# EXHIBIT A

**M&T Bank** RETAIL INSTALLMENT CONTRACT (MOYEN VEHICULE) **FORM 1000-92**

**FINANCIAL INFORMATION**

**PERCENTAGE RATE** 10.99% **FINANCIAL CHARGE** \$1,000.00 **Amount of credit** \$10,000.00 **Total of Payments** \$11,000.00 **Total Debt Price** \$10,000.00

**Vehicle Information**

**Year/Make/Model** 1992/DAEWOO/PRIMA **Year/Make/Model** 1992/DAEWOO/PRIMA **Year/Make/Model** 1992/DAEWOO/PRIMA

**Buyer Information**

**Buyer Name** BLANCA A LUCIANO **Buyer Address** 1000 100th Ave NE, Suite 100, Bellevue, WA 98004 **Buyer Phone** (206) 835-1234

**Seller Information**

**Seller Name** STAR HYUNDAI, LLC **Seller Address** 1000 100th Ave NE, Suite 100, Bellevue, WA 98004 **Seller Phone** (206) 835-1234

**Vehicle Description**

**Year/Make/Model** 1992/DAEWOO/PRIMA **Year/Make/Model** 1992/DAEWOO/PRIMA **Year/Make/Model** 1992/DAEWOO/PRIMA

**Financing Details**

**Amount of credit** \$10,000.00 **Percentage Rate** 10.99% **Financial Charge** \$1,000.00 **Total of Payments** \$11,000.00 **Total Debt Price** \$10,000.00

**Signatures**

**Buyer Signature** [Signature] **Seller Signature** [Signature] **Witness Signature** [Signature]

**Notarization**

**Notary Public** [Signature] **Notary Seal** [Seal]

**Disclaimer**

This document is not a contract. It is a statement of the terms and conditions of the financing. The actual contract is the Retail Installment Contract (Form 1000-92).

TRUE COPY - UCC NON-AUTHORITATIVE COPY

time, which costs \$ \_\_\_\_\_ N/A

(Bills of Buyer to be insured for Single Credit  
Unemployment Insurance)

or \_\_\_\_\_ Term: N/A

Insurance, which costs \$ \_\_\_\_\_ N/A

1. X \_\_\_\_\_ N/A  
2. X \_\_\_\_\_ N/A

Signatures of both Buyers to be insured for  
Single Credit Unemployment Insurance

Insured: \_\_\_\_\_ Term: N/A

**CANCELLATION COVERAGE IS NOT REQUIRED:** Debt Cancellation Coverage provides for the cancellation of your liability for amounts you owe under this Contract in excess of the amount of the Vehicle in total less the Vehicle. This sometimes called "gap" coverage. GAP coverage is not required to obtain credit and will not be provided unless it is requested by you. If you want GAP coverage, you must request it by completing and returning to us a separate GAP coverage request form. If you do not want GAP coverage, you must sign a separate GAP waiver. If you do not sign a separate GAP waiver, we will assume you want GAP coverage and agree to pay the additional cost disclosed in the "Termination of Amount of Debt" section of this contract.

4. We intend to assign this Contract and Security Agreement to the Assignee named in this provision. If the Assignee assigns the Contract to a subsequent assignee, the term also to such subsequent assignee. After the assignment, all rights and benefits of the Seller in this Contract and in the Security Agreement shall belong to and be enforceable by the one. The Assignee's name and address is:

**MET BANK**

Installment Loan Operations, One Fountain Plaza, P.O. Box 787  
Buffalo, New York 14240

INW: Any person signing the Co-Signer's Agreement below promises separately and together with all Co-Signers) and Buyer(s), to pay all sums due and to perform all agreements in strict Co-Signer will not be an owner of the Vehicle.

WEL: Any person signing this Co-Owner's Security Agreement below gives us a security interest in the Vehicle and agrees separately and together with all Co-Owner(s) and Buyer(s) to all agreements in this Security Agreement and all other parts of this Contract except the "Promises to Pay" section.

: The terms shown in the boxes above are part of this Contract.

SE TO PAY: You agree to pay us the Total Sale Price for the Vehicle in U.S. funds by the Third Down Payment, and paying us the Amount Financed plus the credit charge called "Finance Charge" in 36 equal monthly payments. You also agree to pay us the Sales Tax, Title, License, and Dealer Fees. You agree to make payments in accordance with the Payment Schedule. You agree to make payments on or before the same day of each month as the first payment. You agree to pay all other amounts which may become due under the terms of the contract. You agree to make payments at the place or to send payments to the branch office nearest you. The branch office is the branch office of the branch in which the Automobile was sold. You agree to make payments to the branch office in which the Automobile was sold. You agree to make payments to the branch office in which the Automobile was sold.

**SECURITY AGREEMENT:** To secure the payment of all sums due and the performance of all required obligations under this Contract, you give us a security interest in the Vehicle, in all parts (called "accessories") attached to the Vehicle at any later time, and in all proceeds of the Vehicle, including insurance proceeds.

ADDITIONAL TERMS AND CONDITIONS: THIS CONTRACT CONTINUES ON THE REVERSE SIDE. YOU ARE OBLIGATED TO ALL THE TERMS OF THE CONTRACT WHICH APPEAR ON THE FRONT AND REVERSE SIDES.

Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to be a part of the Finance Charge.

**NOTE TO THE BUYER:** 1. Do not sign this Contract before you read it or if it contains any blank space. 2. You are entitled to a fully filled-in copy of this Contract. 3. Under the law, you have the right to pay off in advance the full amount due. If you do, you may, depending on the nature of the credit service charge, either (a) prepay without penalty, or (b) under some instances obtain a rebate of the credit service charge. 4. According to law you have the privilege of purchasing the insurance on your motor vehicle provided for in this Contract from an agent or broker of your own selection.

I hereby agree to sell the Vehicle to you under the terms of this Contract.

**You hereby acknowledge receipt of a copy of this Contract.**

STAR HYUNDAI, LLC

28/22/2015  
(LEGAL)

**RETAIL INSTALLMENT CONTRACT**

BUYER X [Signature] (SEAL) 08/22/2015  
Date \_\_\_\_\_  
BUYER X \_\_\_\_\_ (SEAL) \_\_\_\_\_  
Date \_\_\_\_\_

**CO-SIGNER NOTICE**

to pay the debt identified above, although you may not personally receive any property, services or money. You may be sued for it, although the person who receives the property, services or money is capable of paying the debt. You should know that the Total of the listed above does not include Finance Charges resulting from delinquency, late charges, repossession or foreclosure costs, court costs and attorney's fees, or other charges that are stated in the Contract. You will also have to pay some or all of these costs and charges as required by us of the Contract. This notice is not the writing that obligates you to pay the debt. You have read the Retail Installment Contract, which is the exact terms of your obligation, and the Co-Signer(s) Notice.

I have been given a completed copy of this Notice and each writing that obligates you or the Buyer on this Contract.

\_\_\_\_\_  
Signature of Co-Signer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Co-Signer

\_\_\_\_\_  
Date

**YOU SHOULD READ THE NOTICE TO CO-SIGNER ABOVE, BEFORE SIGNING THE CO-SIGNER'S AGREEMENT.**

THE AGREEMENT: Yes, the undersigned hereby agrees to the above terms and conditions. I am legally bound by all the terms of this Contract, separately and together, with the Buyer. I am making this promise to induce you to make this Contract with the Buyer, and I will use the proceeds only for the Buyer's benefit. You agree to pay even though they may not have made any prior demand for payment on the Buyer or exercised their right to sue. I am not receiving anything in return for this Contract.

Signature \_\_\_\_\_ (SEAL) Address \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ (SEAL) Address \_\_\_\_\_ Date \_\_\_\_\_

**SECURITY AGREEMENT:** You, the person signing below as "Co-Owner," together with the Buyer(s) being all of the Owners of the Vehicle, give us a security interest in the Vehicle and you agree to be bound by the terms of the Security Agreement and all other parts of this Contract except the "Purchase Price" section. You are giving us this interest in the Vehicle to secure the payment by the Buyer, and by securing the payment by the Buyer of all sums due on this Contract. You will not be responsible for any deficiency in the amount repaid to us out of the sale of the Vehicle.

Name	Address	Date
------	---------	------

## ASSIGNMENT

as to be bound by all provisions of this Contract. Also, for value received and intending to be legally bound hereby, the Seller (A) assigns this Contract to the Assignee (B) subject to all terms and conditions of the Master agreement currently in effect between Seller and Assignee, and (B) agrees, with respect to this Contract, all warranties and all other terms in such dealer's agreement, whether or not Seller signs this Assignment. If Assignee takes assignment of the Contract from the Seller, then such assignment shall be without recourse, pursuant to the dealer agreement, and made as of the date of the Contract. For purposes of this Assignment, Seller hereby appoints Assignee as its properly authorized agent to execute this Assignment.

Name of Seller \_\_\_\_\_

Signature and Title of Person signing for Seller

### No Cooling Off Period

we not provide for a "cooling off" or other cancellation period for this Contract. Therefore, you cannot later cancel this Contract  
 use you change your mind or wish you had acquired a different item: After you sign above, you may only cancel this Contract for  
 reasons

WZL(G-2) 4/2/2004  
Factual Summary - BNC

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Interest Rate \_\_\_\_\_ %

TRUE COPY- UCC NON-AUTHORITATIVE COPY

NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 03/30/2022

By signing, you select Single Credit Involuntary Unemployment Insurance, which costs \$ <u>N/A</u>	What is your age? <u>N/A</u> Yes	By signing, you both select Joint Credit Involuntary Unemployment Insurance, which costs \$ <u>N/A</u>	What are your ages? <u>N/A</u> Percent- age to be returned <u>N/A</u>
Signature of Buyer to be insured for Single Credit Involuntary Unemployment Insurance	Term: <u>N/A</u>	2. X Signature of both Buyers to be insured for Joint Credit Involuntary Unemployment Insurance	Term: <u>N/A</u>

**BEST CANCELLATION COVERAGE IS NOT REQUIRED:** Best Cancellation Coverage provides for the cancellation of your liability for amounts you owe under this Contract in excess of the value of the Vehicle in the event of a total loss of the Vehicle. This is sometimes called "GAP" coverage. GAP coverage is not required to obtain credit and will not be provided unless it is obtained and you sign a separate GAP Notice requesting GAP coverage, which means you want GAP coverage and agree to pay the additional cost disclosed in the "Financing of Amount Financed".

**ASSIGNEE:** We intend to assign this Contract and Security Agreement to the Assignee named in this provision. If the Assignee assigns the Contract to a subsequent assignee, the term also refers to such subsequent assignee. After the assignment, all rights and benefits of the Seller in this Contract and in the Security Agreement shall belong to and be enforceable by the Assignee. The Assignee's name and address is:

**MEET BANK**  
Installment Loan Operations, One Fountain Plaza, P.O. Box 767  
Buffalo, New York 14240

**CO-SIGNER:** Any person signing the Co-Signer's Agreement below promises separately and together with all Co-Signer(s) and Buyer(s), to pay all sums due and to perform all agreements in this Contract. Co-Signer will not be an Owner of the Vehicle.

**CO-OWNER:** Any person signing the Co-Owner's Security Agreement below gives us a security interest in the Vehicle and agrees separately and together with all Co-Owner(s) and Buyer(s), to perform all agreements in the Security Agreement and all other parts of this Contract except the "Promise to Pay" section.

**TERMS:** The terms shown in the boxes above are part of this Contract.

**PROMISE TO PAY:** You agree to pay us the Total Sale Price for the Vehicle in U.S. funds by making the Total Down Payment, and paying us the Amount Financed plus the credit service charge (called "interest" in this Contract) at the Annual Percentage Rate shown above. You promise to make payments in accordance with the Payment Schedule. You promise to make payments on or before the same day of each month as the first payment due date. You agree to pay all other amounts which may become due under the terms of this Contract. You agree to make payments at the place or to send payments to the address which the Assignee must recently specify in the written notice to you.

**SECURITY AGREEMENT:** To secure the payment of all sums due and the performance of all required obligations under this Contract, you give us a security interest in the Vehicle, in all parts (called "Accessories") attached to the Vehicle at any later time, and in any proceeds of the Vehicle, including insurance proceeds.

**ADDITIONAL TERMS AND CONDITIONS:** THIS CONTRACT CONTAINS ON THE REVERSE SIDE. YOU ARE OBLIGATED TO ALL THE TERMS OF THE CONTRACT WHICH APPEAR ON THE FRONT AND REVERSE SIDES.

**The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.**

**NOTICE TO THE BUYER:** 1. Do not sign this Contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled-in copy of this Contract. 3. Under the law, you have the right to pay off in advance the full amount due. If you do so, you may, depending on the nature of the credit service charge, either (a) prepay without penalty, or (b) under some circumstances obtain a rebate of the credit service charge. 4. According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this Contract from an agent or broker of your own selection.

By signing below, we agree to sell the Vehicle to you under the terms of this Contract.

You hereby acknowledge receipt of a copy of this Contract.

RETAIL INSTALLMENT CONTRACT

SELLER: STAR HYUNDAI, LLC

BY: [Signature] 08/22/2016 (SEAL) Date

BUYER: [Signature] (SEAL) 08/22/2016 Date

#### CO-SIGNER NOTICE

You agree to pay the debt identified above, although you may not personally receive any property, services or money. You may be sued for payment, although the person who receives the property, services or money is capable of paying the debt. You should know that the Total of Payments listed above does not include Finance Charges resulting from delinquency, late charges, repossession or foreclosure costs, court costs or attorney's fees, or other charges that are stated in the Contract. You will also have to pay some or all of these costs and charges as required by the terms of the Contract. This notice is not the writing that obligates you to pay the debt. You have read the Retail Installment Contract, which contains the exact terms of your obligation, and the Co-Signer(s) Notice.

You have been given a completed copy of this Notice and each writing that obligates you or the Buyer on this Contract.

X Signature of Co-Signer Date X Signature of Co-Signer Date

**CO-SIGNER'S AGREEMENT:** YOU SHOULD READ THE NOTICE TO CO-SIGNER ABOVE, BEFORE SIGNING THE CO-SIGNER'S AGREEMENT.

**CO-SIGNER'S AGREEMENT:** You, the person (or persons) signing below as "Co-Signer", promise to pay to us all sums due on this Contract and to perform all agreements in this Contract. You intend to be legally bound by all the terms of this Contract, separately and together, with the Buyer. You are making this promise to induce us to make this Contract with the Buyer, even though we will use the proceeds only for the Buyer's benefit. You agree to pay even though we may not have made any prior demand for payment on the Buyer or exercised our security interest. You also acknowledge receiving a completed copy of this Contract.

X Co-Signer's Signature (SEAL) Address Date  
X Co-Signer's Signature (SEAL) Address Date

**CO-OWNER'S SECURITY AGREEMENT:** You, the person signing below as "Co-Owner", together with the Buyer(s) being all of the Owners of the Vehicle, give us a security interest in the Vehicle identified above. You agree to be bound by the terms of the Security Agreement and all other parts of this Contract except the "Promise to Pay" section. You are giving us a security interest to induce us to make this Contract with the Buyer, and to secure the payment by the Buyer of all sums due on this Contract. You will not be responsible for any delinquency which might be due after repossession and sale of the Vehicle.

X Co-Owner's Signature Address Date

#### ASSIGNMENT

The Seller agrees to be bound by all provisions of this Contract. Also, for value received and intending to be legally bound hereby, the Seller (a) assigns this Contract to the Assignee pursuant to and subject to all terms and conditions of the dealer agreement currently in effect between Seller and Assignee and (b) makes, with respect to this Contract, all warranties a representations set forth in such dealer agreement. Whether or not Seller signs this Assignment, if Assignee makes assignment of the Contract from the Seller, then such assignment shall be deemed to be "without recourse", pursuant to the dealer agreement, and made as of the date of the Contract. For purposes of this Assignment, Seller hereby appoints Assignee as its authorized agent to copy any missing pages of this Contract.

Date Name of Seller Signature and Title of Person signing for Seller

#### No Cooling Off Period

State law does not provide for a "cooling off" or other cancellation period for this Contract. Therefore, you cannot later cancel this Contract simply because you change your mind or wish you had acquired a different item. After you sign above, you may only cancel this Contract for legally valid reasons.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

TRUE COPY- UCC NON-AUTHORITATIVE COPY

# **EXHIBIT B**

**M&T Bank**

Consumer Lending  
Department  
Remarketing Support  
P.O. Box 2187  
Buffalo, New York  
14240

5/3/2018 1:22:06 PM

## NOTICE OF OUR PLAN TO SELL PROPERTY

BLANCA I LUCIANO  
95 04 97TH ST APT 2FL  
OZONE PARK, NY 11416

Retail Installment Sale Contract Account Number: (the "Contract")  
Collateral: 2016 HYUNDAI SANTA FE S (the "Collateral")  
VIN:

We have your Collateral because you broke promises in our agreement. We will sell the Collateral at private sale sometime after 5/18/2018.

The money that we get from the sale (after paying our expenses) will reduce the amount you owe. If we get less money than you owe, you will still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying the full amount you owe (not just the past due payments) including our expenses. If you cannot pay the full amount you owe, call us at 1-800-724-8644. You can also get it back for less. For additional information, call us at 1-800-724-8644.

If you want us to explain to you in writing how we have figured the amount you owe us, you may call us at 1-800-724-8644 or write to M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240 and request a written explanation. If you need more information about the sale call us at 1-800-724-8644 or write us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240.

We are sending this notice to the following other people who have an interest in the Collateral or who owe money to the lender:

(names of all other debtors)

**Additional Information:**

**Getting the Vehicle Back for Sale:** At any time before the sale, we will allow you to get the Collateral back and reinstate your Contract by paying certified funds to M&T all past due installment payments under your Contract (including all late charges), plus our expenses. You must mail your payment to M&T Bank, PO Box 844, Buffalo, NY 14240. The amount you must pay to reinstate your Contract and get the Collateral back as of the date of this notice is as follows:

REPAYMENTS ON YOUR ACCOUNT:	\$1,348.92
LATE CHARGES:	\$ 354.63
REPOSSESSION FEES:	\$ 275.00
TOTAL AMOUNT DUE:	\$1,978.55

Right to Redeem:



You also have the right to get the Collateral back at any time before we sell it by paying us the full amount you owe (not just the past due payments) including our expenses ("redeem"). You may call us at 1-800-724-8644 or write us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240 to obtain information concerning the amount due to redeem the Collateral and to arrange to redeem the Collateral. As of the date of this notice, the amount required to redeem the Collateral is:

Unpaid principal balance:	\$33,074.61
Accrued finance charges:	\$ 131.37
Unpaid late charges:	\$ 354.63
Repossession expenses:	\$ 275.00
Sale preparation expenses:	\$ 200.00
Storage expenses:	\$ 20.00
Attorney fees incurred:	\$ 0.00
Legal costs incurred:	\$ 0.00
Other amounts due (itemize and describe)	

Amount Required to Redeem: \$34,055.61

The longer you wait, the more you may have to pay to get the Collateral back. The amount of finance charges you owe will increase each day you pay after the date of this notice. We may also incur additional expenses for which you may be responsible including the reasonable expenses of repossessing, holding, preparing for sale and selling the property and reasonable attorneys' fees and legal expenses, as permitted by law. Your right to reinstate the Contract or to redeem the Collateral by paying all that you owe continues until the Collateral is sold. If you wish to get the Collateral back, you may obtain updated information regarding the amount required or discuss your options for getting the Collateral back by calling us at 1-800-724-8644 or by writing us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240.

We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit record.

As noted above, you are entitled to an accounting of the unpaid indebtedness secured by the Collateral we intend to sell. You may request an accounting by calling 1-800-724-8644.

If you have filed for relief under the United States Bankruptcy Code, please understand that this Notice is given to you as a requirement of state law and is not an attempt to collect a debt, including any deficiency after the sale. If you have not filed for relief under the United States Bankruptcy Code, then this is an attempt to collect a debt and any information obtained will be used for that purpose.

If you have any questions regarding this notice or would like to obtain information regarding the debt secured by the Collateral or the intended sale of the Collateral as described above, please contact us immediately by calling 1-800-724-8644 or by writing to us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240. The office hours associated with our phone number 1-800-724-8644 are Monday through Thursday 8:00 am - 9:00 pm, EST and Friday 8:00 am - 5:00 pm EST.

Sincerely,

Ms. Deborah Fick  
Repossession Specialist



**EXHIBIT C**

June 26, 2018

Blanca I Luciano  
95 04 97th St Apt 2FL  
Ozone Park NY 11416

RE: Name: Blanca I Luciano  
Account #:  
Collateral: 2016 Hyundai Santa Fe-S

Dear Blanca I Luciano:

Please be advised that your repossessed collateral was sold at a private auction on 6/21/2018. Here is a description of how we applied the proceeds from the auction to your account balance and calculated the deficiency of \$17,709.22 (the amount you owe us) that remains after the sale:

Payoff prior to Auction Date:	\$33,456.22
Less: Auction Proceeds:	\$16,600.00
Equals: Obligation after proceeds	\$16,856.22
Plus: Auction Expense:	\$ 578.00
Plus: Repossession Expense:	\$ 275.00
Less: Credits	\$ .00
Equals: Total Amount Due	\$17,709.22

Future debts, credit charges, interest and expenses, if any, may increase the amount of the deficiency. Please contact me immediately to make arrangements for payment of the remaining amount due.

If you have filed for relief under the United States Bankruptcy Code, please understand that this notice is given to you for informational purposes only. We provide you with an accounting of the debt and any deficiency after the sale.

However, if you have not filed for relief under the United States Bankruptcy Code, you are not entitled to protection under the Bankruptcy Code, this is an attempt to collect a debt and any information obtained will be used for that purpose.

If you want additional information about this transaction, you may contact us at 1-800-724-8644 or write to us at M&T Bank, Attention: Remarketing Support, PO Box 2187, Buffalo, NY 14240. The office hours associated with our phone number 1-800-724-8644 are Monday through Thursday 8:00 am – 9:00 pm, EST and Friday 8:00 am – 5:00 pm EST.

Sincerely,

Beth MacPherson  
Workout Specialist